

**United States Department of Labor
Employees' Compensation Appeals Board**

WILLIAM CAMP, Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
DEPOT, Corpus Christi, TX, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-594
Issued: June 22, 2004**

Appearances:
William Camp, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On December 29, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 3, 2003, suspending his right to compensation for refusing to submit to a medical examination. He also appealed from a nonmerit decision dated December 1, 2003 denying reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly suspended appellant's right to compensation benefits on the grounds that he refused to submit to a medical examination; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On July 16, 2002 appellant, then a 55-year-old sheetmetal worker, filed a notice of occupational disease alleging that he developed a bilateral loss of hearing due to exposure to noise in the performance of his federal duties. He provided his address as 8050 South Padre

Island Drive, number N06, Corpus Christi, Texas, 78414. Appellant submitted factual and medical evidence in support of his claim.

In a letter dated September 18, 2002 and addressed as above, the Office referred appellant for a second opinion evaluation scheduled for October 14, 2002, with Dr. Michael Jaindl, a Board-certified otolaryngologist.¹ The Office informed appellant of his responsibility to attend the appointment and that if he failed to do so without an acceptable reason, his compensation benefits could be suspended in accordance with section 8123(d) of the Federal Employees' Compensation Act.²

By letter dated December 30, 2002, mailed to appellant's address of record, the Office proposed to suspend his compensation benefits on the grounds that he failed to appear for the scheduled October 14, 2002 medical examination. The Office allowed appellant 14 days to provide good cause for his failure to appear and informed him of the penalty provision of section 8123(d) of the Act. This letter was returned to the Office as undeliverable.

By decision dated February 3, 2003, mailed to appellant's address of record, the Office suspended his right to compensation benefits beginning October 14, 2002. This decision was returned to the Office as undeliverable.

Appellant requested reconsideration of the February 3, 2003 decision on September 1, 2003 through a checkmark on an appeal request form. He listed his address as 8526 Chimneyhill, San Antonio, Texas, 78254. By decision dated December 1, 2003, the Office denied appellant's request for reconsideration of the merits on the grounds that he failed to submit new evidence or argument in support of his request. On appeal he alleged that he never received the "first letter" and that "the second letter was given to me by my boss 12 days after the date to respond."

LEGAL PRECEDENT -- ISSUE 1

Section 8123 of the Act authorizes the Office to require an employee, who claims disability as a result of federal employment, to undergo a physical examination as it deems necessary.³ The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office.⁴ The Office's federal regulation at section 10.320 provides that a claimant must submit to examination by a qualified physician as often and at such time and places as the Office considers reasonably necessary.⁵ Section 8123(d) of the Act and section 10.323 of the Office's regulation provide that, if an employee refuses to submit to or

¹ There is no indication in the record that this letter was returned to the Office as undeliverable.

² 5 U.S.C. § 8123(d).

³ 5 U.S.C. § 8123(a).

⁴ *James C. Talbert*, 42 ECAB 974, 976 (1991).

⁵ 20 C.F.R. § 10.320.

obstructs a directed medical examination, his or her right to compensation is suspended until the refusal or obstruction ceases.⁶ However, before the Office may invoke these provisions, the employee is provided a period of 14 days within which to present in writing his or her reasons for the refusal or obstruction.⁷ If good cause for the refusal or obstruction is not established entitlement to compensation is suspended in accordance with section 8123(d) of the Act.⁸

ANALYSIS -- ISSUE 1

In this case, the Office directed appellant to attend a second opinion evaluation with Dr. Jaindl and mailed this letter to his address of record. Appellant did not attend this examination scheduled for October 14, 2002 and the September 18, 2002 letter was not returned to the Office as undeliverable. The Office informed appellant of the penalty provision of section 8123(d) of the Act on December 30, 2002 by letter directed to his Corpus Christi address, and allowed him 14 days to provide a written explanation of his refusal to attend the scheduled appointment. This letter was returned as undeliverable and appellant did not respond. By decision dated February 3, 2003, mailed to the same address, the Office suspended appellant's right to compensation benefits beginning October 14, 2002. The decision was also returned as undeliverable. The Office's regulation require that "A copy of the decision shall be mailed to the employee's last known address."⁹ There is no indication in the record that appellant ever provided the Office with written notice of a change of address prior to the February 3, 2003 request for reconsideration. Therefore, the Office followed its regulation and appropriately mailed the February 3, 2003 decision as well as the December 30, 2002 notice of suspension letter to appellant's Corpus Christi address.

The Office directed appellant to report for a second opinion medical examination and informed him of his obligation to do so. He failed to appear for the examination on the scheduled date of October 14, 2002. The Office informed appellant that he had 14 days to provide his reasons for failing to appear and mailed this letter to his address of record. He did not respond. Therefore, the Office properly determined that appellant had refused to submit to a properly scheduled medical examination and suspended his right to compensation benefits beginning on the date of the scheduled appointment by decision dated February 3, 2003 and mailed to his address of record.

The effect of appellant's refusal to attend the examination with Dr. Jaindl is a delay in the development of his claim for a hearing loss, as he is not currently entitled to benefits.¹⁰

⁶ 5 U.S.C. § 8123(d); 20 C.F.R. § 10.323.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.14(d) (July 2000).

⁸ *Id.*

⁹ 20 C.F.R. § 10.127.

¹⁰ *Vicki L. McOmber*, Docket No. 03-1031 (issued August 19, 2003).

LEGAL PRECEDENT -- ISSUE 2

The Office's regulation provide that a timely request for reconsideration in writing, may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law, advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹

ANALYSIS -- ISSUE 2

Following the Office's February 3, 2003 decision suspending appellant's right to compensation benefits based on his refusal to attend a scheduled medical examination, he requested reconsideration of this decision on September 1, 2003. His request for reconsideration consisted of a checkmark on an appeal request form and containing his new address in San Antonio. Appellant did not submit any evidence or argument in support of his request for reconsideration.

As appellant did not submit evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office or constitutes relevant and pertinent new evidence not previously considered by the Office, the Office properly declined to reopen appellant's claim for consideration of the merits under section 8128(a) of the Act.

CONCLUSION

The Board finds that the Office properly suspended appellant's right to compensation benefits for his alleged employment-related loss of hearing as he refused to attend a scheduled medical examination. The Board further finds that the Office properly declined to reopen appellant's claim for consideration of the merits on December 1, 2003 on the grounds that he failed to submit any evidence or argument in support of his September 1, 2003 request for reconsideration.

¹¹ 5 U.S.C. §§ 10.609(a) and 10.606(b).

ORDER

IT IS HEREBY ORDERED THAT the December 1 and February 3, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 22, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member